



U.S. Department of Justice

Environment and Natural Resources Division

BSG:AML
DJ No. 90-11-3-1620/2

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August 1, 2002

EPA Region 5 Records Ctr.



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VIA EMAIL, TELECOPY, AND REGULAR MAIL

Gary Franke, Esq.
120 E. Fourth St.
Suite 560
Cincinnati, OH 45202

Re: United States v. Aeronca, Inc. et al.
Civil Action No. 1:01 CV 00439
Deficiencies in Responses to United States' Second Request

Dear Mr. Franke:

On June 17, 2002, I served the United States' First Request for Admissions, Second Set of Interrogatories and Second Request for Production of Documents ("Second Request") to your three clients: (1) Clarke's Services, Inc.; (2) Richard M. Clarke; and (3) Clarke, Inc. Over the past six weeks, I have advised you numerous times that I hoped you and your clients would make a good faith effort to provide responsive documents to this Second Request. Unfortunately, it does not appear that you and your clients took me seriously. Indeed, in response to the United States' Second Request, you produced just two documents. It is not credible for you and your clients to claim that they have in their possession, custody or control only two documents responsive to my Second Request.

Your clients' responses to the United States' most recent written discovery requests are -- in keeping with their previous responses -- woefully deficient. While, in the past, I have tried to avoid bringing discovery disputes related to my written discovery to the attention of the Court by taking depositions when I thought I could get the information faster and easier, it has become clear that that strategy is not working.^{1/}

^{1/} As just one example, in my first interrogatories and document requests, I asked your clients to identify the shareholders of their companies and their companies' predecessors. In their written discovery responses, your clients -- incredibly -- claimed not to have any knowledge of any of the predecessor companies, notwithstanding the fact that Mr. Richard Clarke worked for his father in the predecessor businesses. Moreover, in your clients' first written responses, your clients failed to respond to my request for the shareholdings in the companies in any complete manner at all. When I sought to get the information through Mr. Clarke in his deposition in July,

Because I want to get this letter out to you immediately so that I can give you and your clients one last chance to make a good faith effort to produce responsive documents, I am not including in this letter the deficiencies in your clients' responses to my Requests for Admissions. I reserve my right to do so at a later date.

With respect to your clients' responses to my Second Set of Interrogatories and Second Request for Production of Documents, the deficiencies are listed below. If you do not cure the deficiencies noted below by no later than 12:00 noon on August 8, (I am leaving for Ohio later that day which is why I am making the time so specific), I will take appropriate action.

* * * *

With respect to the United States' Second Set of Interrogatories and Second Request for Production of Documents, the deficiencies in your clients' responses are as follows:

General Deficiency

You have made liberal use of the term "N/A" in responding to the United States' Second Request for Production of Documents. If "N/A" stands for "Not Applicable" that is not an appropriate response. All of the United States' discovery requests are applicable to your clients. If what you are stating is that your clients have no responsive documents, then that is what you must state. If your claim of not having any responsive documents appears less than credible, then the United States will consider its options with respect to such a response.

Particular Deficiencies

Clarke's Services, Inc.

Interrogatories

2. You provided a highly incomplete response to this question. Moreover, you refused to provide documents responsive to the corollary discovery request (Doc. Req. No. 6). Please respond with particularity to this Interrogatory or provide documents from which the responsive information can be derived.

he claimed not to remember who owned what. Indeed, he claimed that he was not even sure whether or not he was the sole shareholder of Clarke's Services after he bought the business from his father. Given that Mr. Clarke claims not to recall many specifics, your clients must produce documents that provide answers.

Document Requests

2. N/A is not an appropriate response. Respond to the request.
3. "N/A" is not an appropriate response. In this document request, I am citing with particularity to an Exhibit to a document that your client signed. How can this be "Not Applicable" to your client?
6. "N/A" is not an appropriate response. It is not credible to believe that your client does not have in its possession, custody, or control documents relating to the distribution of the assets of Clarke's Services upon dissolution. For example, documents presently found in the offices of lawyers or accountants that your client retained during the dissolution and distribution process are in the "custody or control" of your client and must be produced. Moreover, any records that your client can obtain from financial institutions that were involved in this transaction are in your client's "custody or control."
7. "N/A" is not an appropriate response. It is not credible to believe that your client does not have in its possession, custody, or control documents relating to trusts involving the children of Thomas Clarke. (Note: If Richard M. Clarke had produced responsive documents to the United States' Request No. 4 that was directed to Mr. Clarke, then there might be a basis for your assertion of "N/A" as to Clarke's Services. However, Mr. Clarke did not produce any responsive documents in response to Request No. 4 directed to him. See below.)

Richard M. Clarke

Interrogatories

2. You provided a highly incomplete response to this question. Moreover, you refused to provide documents responsive to the corollary discovery request (Doc. Req. No. 4). Please respond to this Interrogatory with particularity or provide documents from which the responsive information can be derived.

Document Requests

2. N/A is not an appropriate response. Clarke, Inc. was the incorporated successor to Dick Clarke. Surely, Clarke, Inc. has documents that reflect customers that Clarke, Inc. inherited from Dick Clarke. Respond to the request.
3. You have attached only two deeds to all three of your responses. These two deeds appear to relate to 9740 Cincinnati-Dayton Rd. Please provide responsive documents to this request.

4. "N/A" is not an appropriate response. It is not credible to believe that your client does not have in its possession, custody, or control documents relating to the distribution of the assets of Clarke's Services upon dissolution. For example, documents presently found in the offices of lawyers or accountants that your client retained during the dissolution and distribution process are in the "custody or control" of your client and must be produced. Moreover, any records that your client can obtain from financial institutions that were involved in this transaction are in your client's "custody or control."
5. "N/A" is not an appropriate response. It is not credible to believe that your client does not have in its possession, custody, or control documents relating to trusts involving the children of Thomas Clarke.
6. "N/A" is not an appropriate response. Please respond.
7. "N/A" is not an appropriate response. Please respond.

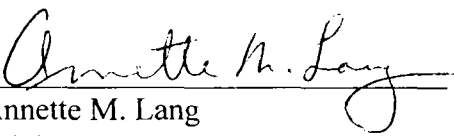
Clarke, Inc.

2. "N/A" is not an appropriate response. Your client clearly processes documents responsive to this request.

* * * *

I have rarely – if ever – seen written responses to discovery requests that are as deficient as yours have been. I hope to see a more comprehensive response, and more documents, by no later than noon on August 8, 2002.

Sincerely,


Annette M. Lang
Trial Attorney

cc: Skinner Service List

Skinner Service List

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